

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JULIAN LANGITUA,

Plaintiff,

-v-

LA CASA BONITA CORP d/b/a Casa Bonita, CASA
DOMINICANA OUTLET CORP d/b/a Casa Dominicana,
CRAZY HOT DEALS OUTLET CORP. d/b/a Crazy Hot
Deals, and MOHAMMAD AMSAD MOHAMMAD,

Defendants.
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23 Civ. 9351 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:


A telephonic hearing on Plaintiff Julian Lantigua’s motion for a default judgment, Dkt. 30, is scheduled for January 22, 2024, at 3:00 p.m. Plaintiff seeks, *inter alia*, unpaid minimum wage and unpaid overtime, covering the period of May 1, 2020 through March 27, 2023. *See id.* ¶¶ 45-53; Dkt. 30-11. In his sworn declaration, submitted in support of his default judgment motion, Plaintiff only avers his salary as of July 2020. *See* Dkt. 30-10 (“From approximately July 2020 until on or about March 27, 2023, Defendants paid me a fixed salary of \$90 per day.”). While the Complaint does allege Plaintiff’s salary starting in approximately May 2020, Dkt. 1 ¶ 48, that is insufficient to establish his entitlement to damages prior to July 2020. *See, e.g., Cement & Concrete Workers Dist. Council Welfare Fund, Pension Fund, Annuity Fund, Educ. & Training Fund & Other Funds v. Metro Found. Contractors Inc.*, 699 F.3d 230, 234 (2d Cir. 2012) (“[W]hile a party’s default is deemed to constitute a concession of all well pleaded allegations of liability, it is not considered an admission of damages.” (quotations omitted)). Instead, a plaintiff “bears the burden of . . . substantiat[ing] his claim with evidence to prove the extent of damages.” *Dunn v. Advanced Credit Recovery Inc.*, No. 11 Civ. 4023 (PAE) (JLC), 2012 WL 676350, at *2 (S.D.N.Y. Mar. 1,

2012), *report and recommendation adopted by* 2012 WL 1114335 (S.D.N.Y. Apr. 3, 2012). This requires a plaintiff to submit admissible evidence, which may be “either based upon evidence presented at a hearing or upon a review of detailed affidavits and documentary evidence.” *Metro Found. Contractors*, 699 F.3d at 234; *see House v. Kent Worldwide Mach. Works, Inc.*, 359 F. App’x 206, 207 (2d Cir. 2010) (“[D]amages must be based on admissible evidence.”).

Accordingly, in the event that Plaintiff is seeking damages starting on May 1, 2020 (as opposed to starting on July 1, 2020), he must file a supplemental declaration under oath setting forth his salary at Casa Dominicana in May and June 2020. Such affidavit must be filed no later than 12:00 p.m. on January 22, 2024, although an earlier filing certainly would be appreciated by the Court.

SO ORDERED.

Dated: January 19, 2024
New York, New York



JOHN P. CRONAN
United States District Judge